

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

HENRY C. HAYES,
Plaintiff,

v.

S. JOSEY,
Defendant.

Case No. [19-cv-05216-WHO](#) (PR)

ORDER OF DISMISSAL

The sole defendant in this action (S. Josey) remains unserved, the summons having been returned as unexecuted. (Dkt. No. 23.) The unexecuted summons states Josey is not employed at Pelican Bay State Prison. (*Id.*)

Plaintiff Hayes was ordered to, by July 1, 2021, either himself serve Josey with the summons and complaint, or provide the Court with sufficient information so that the Marshal is able to serve Josey. (Dkt. No. 24.) He was warned that failure to comply with these instructions would result in the dismissal of his suit. (*Id.*) Since that order was issued, there has been no response of any kind.

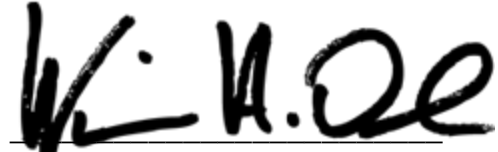
Hayes's complaint has been pending for over 120 days and he has not remedied the service problem as ordered. Therefore, his suit is subject to dismissal without prejudice as to the unserved defendant. *See* Fed. R. Civ. P. 4(m). Because Josey is the sole defendant, this means the suit is DISMISSED (without prejudice).

1 Because this dismissal is without prejudice, Hayes may move to reopen. Any such
2 motion must contain the correct address for serving Josey. The motion to reopen must be
3 clearly labelled as "MOTION TO REOPEN."

4 The Clerk shall enter judgment in favor of defendant and close the file.

5 **IT IS SO ORDERED.**

6 **Dated:** September 30, 2021

7 
8 WILLIAM H. ORRICK
United States District Judge

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
United States District Court
Northern District of California